

April 20, 2007

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
12th Street Lobby, TW-A325
Washington, D.C. 20554

Re: Notice of *Ex Parte* Communication; WC Docket No. 05-337

Dear Ms. Dortch:

On Thursday, April 19, 2007, Christopher Guttman-McCabe, Vice President, and Paul Garnett, Assistant Vice President, CTIA - The Wireless Association® (“CTIA”), met with Tom Navin, Chief, Renee Crittendon, Deputy Chief, and Randy Clarke, Legal Counsel, all of the FCC’s Wireline Competition Bureau to discuss CTIA’s strong and consistent support for real and significant reform to the universal service fund. Throughout the course of this proceeding and others, CTIA has set forth a number of competitively- and technologically-neutral proposals to curb fund growth and expand the contribution base. In particular, CTIA has advocated: (1) Further disaggregation and targeting of support within each study area at least to the wire center level, to ensure that support is available only in the areas where it is truly needed; (2) The use of competitively-neutral reverse auctions to establish market-based support levels in high-cost service areas; (3) The expanded use of forward-looking costs rather than embedded costs, particularly for larger rural incumbent LECs, to determine efficient support levels and reduce the size of the fund; and (4) A shift to a numbers- and capacity-based contribution mechanism to preserve or expand the contribution base as communications migrate to alternative networks not contemplated by the current revenues-based regime. In advancing this package of reform proposals, CTIA has worked to foster compromise and cooperation, recognizing the value of industry consensus even when that consensus results in a policy that would not necessarily represent its “first choice.” Importantly, CTIA has only put forth proposals that can be defended from a legal, policy, and economic perspective.

To that end, CTIA has stressed the necessity of competitively- and technologically-neutral universal service policies. Indeed, the Federal-State Joint Board on Universal Service (“Joint Board”) and the FCC consistently have supported and implemented competitively- and technologically-neutral universal service regulations. As the Rural Task Force noted during the course of its deliberations, “Section 254(b) and 214(e) of the 1996 Act provide the statutory framework for a system that encourages competition while preserving and advancing universal

service.”¹ The FCC noted this statutory mandate in the *First Report and Order*, when it stated that “universal service mechanisms and rules” should “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology or another.”²

The Courts also have ruled in support of nondiscrimination in the universal service context. In *Alenco Communications, Inc. v. FCC*, the United States Court of Appeals for the Fifth Circuit stated that the universal service “program must treat all market participants equally – for example, subsidies must be portable – so that the market, and not local or federal regulators, determines who shall compete for and deliver services to customers.”³ As the Fifth Circuit noted, non-discriminatory incumbent and competitor access to high-cost support “is made necessary not only by the realities of competitive markets but also by statute.”⁴ Accordingly, “[t]he FCC must see to it that *both* universal service and local competition are realized; one cannot be sacrificed in favor of the other.”⁵ This competitive and technology neutrality principle requires that “universal service support mechanisms and rules neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”⁶

It should be no surprise then that competitive and technological neutrality enjoys nearly universal support as a bedrock regulatory principle. Senator Stevens’ proposed universal service legislation would codify the requirement that “[u]niversal service support mechanisms and rules should be competitively neutral” – *i.e.*, that such rules must “neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.”⁷ Moreover, United States Senator Jay Rockefeller and his colleagues recently urged the Joint Board to “seriously consider competitively-neutral proposals” as it works to reform the universal service system. Likewise, United States Senator John Sununu and his colleagues voiced opposition to universal service reforms that “unfairly skew the marketplace” and “pick winners and losers or favor one technology over another.”

¹ Rural Task Force, *White Paper 5: Competition and Universal Service*, at 8 available at <http://www.wutc.wa.gov/rtf> (hereinafter “White Paper 5”) (2000).

² See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8801 para. 47 (1997) (subsequent history omitted).

³ *Alenco Commun. Inc. v. FCC*, 201 F.3d 608, at 616 (5th Cir. 2001).

⁴ *Id.*

⁵ *Id.* at 614 (emphasis in original).

⁶ *Id.*

⁷ See S.101, A Bill To Update and Reinvigorate Universal Service Provided Under the Communications Act of 1934 at § 203.

A commitment to technology neutrality is shared at the Commission. Commissioner Tate has expressed her goal of “work[ing] to create and maintain a regulatory landscape that is fair and technology neutral”⁸ and of placing competing services “on a level playing field.”⁹ FCC Chairman Kevin J. Martin has stated that “all providers of the same service must be treated in a similar manner *regardless of the technology that they employ*,” and “[r]egulation must not have the effect, unintended or otherwise, of favoring the adoption of certain technologies over others.”¹⁰ FCC Commissioner Michael Copps, too, has emphasized that “[t]he role of government” in an age of intermodal competition “is not to pick winners and losers,” because “[g]overnment is poorly equipped for that job.”¹¹

CTIA shares concerns regarding the sustainability of the universal service fund, and urges the Board to take decisive action to bring discipline into the universal service funding process. In doing so, however, the Board must not lose sight of the consumer – who is, after all, the only intended beneficiary of the universal service program. To protect consumers, the Commission must adopt competitively-neutral policies that promote technologies that win out as a result of market competition, and must resist calls for artificial governmental preferences. CTIA, for example, adamantly opposes a cap on high-cost universal service support that would only impact funding for competitive ETCs. Such a regime would inevitably fail to solve the very problem that reform was meant to address.

⁸ “A Rewrite for the 21st Century,” Tennessee Telecommunications Association; Commissioner Deborah Taylor Tate, 2006 FCC LEXIS 2156 (May 2, 2006). Commissioner Tate also praised the Commission’s 2006 *Contribution Order* on the ground that it would “ensur[e] that services are treated in a technology-neutral manner under the Commission’s contribution rules.” *Universal Service Contribution Methodology* et al., 21 FCC Rcd 7518, Statement of Commissioner Deborah Taylor Tate (2006).

⁹ *United Power Line Council’s Petition for Declaratory Ruling Regarding the Classification of Broadband over Power Line Internet Access Service as an Information Service*, WC Docket No. 06-10, Memorandum Opinion and Order, Statement of Commissioner Deborah Taylor Tate.

¹⁰ Remarks of FCC Chairman Kevin J. Martin, TELECOM 05 Conference, United States Telecom Association, Las Vegas, NV; Delivered via Satellite from Washington, DC, 2005 FCC LEXIS 5797 (October 26, 2005) (emphasis added). *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Statement of Chairman Kevin J. Martin at 1 (rel. March 23, 2007); Remarks by Commissioner Kevin J. Martin Federal Communications Commission to the Santa Fe Conference of the Center for Public Utilities Advisory Council, Santa Fe, New Mexico, 2003 FCC LEXIS 1797 (March 18, 2003) (citing FCC’s agreement with principle that “the government should not pick winners and losers among rival technologies or industries”).

¹¹ Remarks of Commissioner Michael J. Copps, OECD Conference on the Future Digital Economy, Rome, Italy, 2006 FCC LEXIS 576 (January 30, 2006).

Pursuant to Section 1.1206 of the Commission's rules, a copy of this letter is being filed via ECFS with your office. Should you have any questions, please do not hesitate to contact the undersigned.

Sincerely,

/s/ Paul Garnett

Paul Garnett

cc: Tom Navin
Renee Crittendon
Randy Clarke